

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)

Amendment of Section 2.106 of the Commission's)
Rules to Allocate Spectrum at 2 GHz for Use by)
the Mobile-Satellite Service)

ET Docket No. 95-18
RM-7927
PP-28

To: The Commission

PETITION FOR EXPEDITED RECONSIDERATION

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SUMMARY

Petitioners urge the Commission to reconsider expeditiously, and reverse, its decision denying the Request for Mandatory Submission of Information ("Request") filed July 30, 1998 with regard to the Commission's proposed relocation of certain 2 GHz incumbent licensees. The Commission appears to have overlooked the urgency of obtaining the information sought in the Request, and its decision will delay, and perhaps prevent, the advent of international competition in the U.S. MSS market. The decision also deprives MSS operators and the Commission itself of facts that the Commission concedes it needs to establish a policy for MSS at 2 GHz, and that MSS operators need to plan the deployment of their satellite systems. Of equal concern, the Commission's decision renders the relocation negotiation process between MSS operators and 2 GHz incumbent licensees completely unworkable.

It seems that the Commission, in its attempt to craft a long-term policy for clearing spectrum for MSS use at 2 GHz, has lost sight of the rapidly approaching deadlines faced by MSS operators that are preparing to offer their services in the U.S. market in the very near future. Without the information described in the Request, such MSS operators will find it difficult to judge whether or how to enter the U.S. market -- and may well find themselves unable to do so altogether. As a result, U.S. consumers may be deprived of the benefits of vigorous competition in the U.S. MSS market for years to come.

The prompt grant of the instant Petition will benefit 2 GHz incumbent licensees as much as MSS operators and the Commission. MSS operators such as ICO have no desire -- or need -- to relocate any 2 GHz incumbents with which they can share spectrum, and 2 GHz incumbents

filing information indicating that such sharing is possible may be able to avoid negotiations and relocation of their 2 GHz operations entirely.

Given the substantial common ground between the information requested by the Commission in the form of comments on its Third Notice of Proposed Rule Making regarding 2 GHz relocation matters, on the one hand, and the information sought in the Request, on the other, it would be a small step for the Commission to require the filing of the information that Petitioners seek. In the absence of such a requirement, however, Petitioners sincerely doubt that MSS operators will be able to obtain the information that they need in time to permit the near-term provision of MSS in the 2 GHz bands.

As demonstrated in the Request, the Commission has ample authority to require the submission of the information described in that Request. The Commission should do so as soon as possible by submitting the information collection described in Appendix A of the instant pleading to the U.S. Office of Management and Budget for emergency processing and approval.

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Amendment of Section 2.106 of the Commission's)	ET Docket No. 95-18
Rules to Allocate Spectrum at 2 GHz for Use by)	RM-7927
the Mobile-Satellite Service)	PP-28

To: The Commission

PETITION FOR EXPEDITED RECONSIDERATION

BT North America Inc., Hughes Telecommunications and Space Company ("Hughes"),
ICO Services Limited,¹ Telecomunicaciones de Mexico and TRW Inc. (together, "Petitioners"),²
through counsel and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106,
hereby petition the Commission to reconsider expeditiously, and reverse, its recent decision³

¹ ICO Services Limited filed with the Commission a Letter of Intent on September 26, 1997, indicating its intention to provide Mobile Satellite Service ("MSS") in the U.S. market through one or more service partners and seeking access to spectrum in the 2 GHz frequency band.

² The foregoing five parties (other than ICO Services Limited) are investors in ICO and constituent members of the ICO USA Service Group ("IUSG"), which is investigating the provision of ICO MSS in the United States.

³ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18 (FCC 98-309) (released November 25, 1998), slip op. at 24-26 (¶¶ 54-57) ("Order").

denying the Request for Mandatory Submission of Information filed on July 30, 1998.⁴

Petitioners respectfully submit that the Order overlooks the urgency of obtaining from all relevant incumbent 2 GHz licensees the information sought in the Request, and thereby delays -- and may, in fact, prevent -- the advent of international competition in the U.S. MSS market; deprives MSS operators and the Commission of facts that the Commission admits are needed in order to establish a viable MSS at 2 GHz; and renders any necessary relocation negotiation process between MSS operators and 2 GHz incumbent licensees unworkable.

Petitioners are concerned that, in its efforts to craft a long-term policy for clearing spectrum for MSS use at 2 GHz, the Commission is neglecting the more pressing needs of MSS operators who are prepared to offer 2 GHz MSS in the U.S. market in the very near future. Should the Commission fail to ensure that such MSS operators have rapid access to the information described in the Request, it will significantly hinder those operators' ability to decide whether and how to enter the U.S. market and thereby deny U.S. consumers the benefits of vigorous competition for years to come. Thus, even if the Commission believed that grant of the Request prior to this time would have been premature, such is clearly not the case now.

Petitioners urge the Commission to recognize that a speedy grant of the Petition will benefit not only MSS operators and the Commission, but 2 GHz incumbent licensees as well. MSS systems such as that of ICO may well be capable of sharing spectrum with many 2 GHz incumbents, and those incumbents that file information indicating that such sharing is possible may be able to avoid the arduous negotiation and relocation processes entirely.

⁴ Request for Mandatory Submission of Information, ET Docket No. 95-18, RM-7927, PP-28 (filed July 30, 1998) ("Request").

The Commission has ample authority to require the submission of the information requested by Petitioners, and Petitioners urge that it do so at the earliest possible time by submitting the above-described information collections promptly to the U.S. Office of Management and Budget ("OMB") for emergency processing and approval.

I. The Order Unnecessarily Delays and May Prevent the Establishment of International Competition in the U.S. MSS Market.

Close to one half of the Request was devoted to an explanation of the urgency of developing a detailed record immediately on the necessity of modifying, replacing or relocating the facilities of affected licensees of the Broadcast Auxiliary Service, the Cable Television Relay Service and the Local Television Transmission Service (together, the "BAS") and the Fixed Service ("FS").⁵ In its Order, however, the Commission does not acknowledge Petitioners' concerns regarding the timetable for the information collection they seek. Instead, the Commission finds the request "premature"⁶ and concludes that the information sought in the Request "is properly a part of the negotiation process."⁷ The Commission also notes, somewhat incongruously, that it has asked BAS licensees (though not FS licensees) to include a substantially abridged version of the information sought in the Request in their comments on the Commission's Third Notice of Proposed Rule Making in the instant proceeding.⁸ Petitioners urge the

⁵ All BAS and FS licensees with operations in the 1990-2025 MHz band, the 2110-2130 MHz band, the 2130-2150 MHz band and the 2165-2200 MHz band will be considered "affected" licensees.

⁶ Order, FCC 98-309, slip op. at 26 (¶ 57).

⁷ Id. at 25 (¶ 55).

⁸ Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18 (FCC 98-309)

Commission to understand the importance of requiring the submission of the information sought in the Request without delay.

As stated in the Petition, ICO's scheduled launch of its first satellite is imminent, and ICO currently plans to commence service in the United States in the third quarter of the year 2000.⁹ It is therefore critical to the IUSG and ICO to establish as soon as possible the business expenses to which ICO and its U.S. service partners may be subject in entering the important U.S. market.

Under the terms of the Order and Third NPRM, however, neither the IUSG nor ICO will receive all of the information that they seek until sometime during the mandatory negotiation period required by the Commission's rules -- quite possibly as late as the year 2001, when ICO's system will already have been operational for months. The IUSG and ICO simply cannot afford to wait that long to obtain an estimate of their potential cost of doing business in the United States.

At stake in the Commission's decision on the instant Petition may be nothing less than the presence of international competition in the U.S. MSS marketplace. As noted in the Request, representatives of the broadcast industry have estimated that the relocation of BAS facilities alone in the 2 GHz bands may cost \$171 million.¹⁰ Without accurate information on U.S. modification/replacement/relocation expenses vis-a-vis affected 2 GHz BAS and FS licensees in the United States, the IUSG and other potential investors may find themselves unable to remain financially committed to ICO's satellite venture. As a result, U.S. consumers may be deprived of

(released November 25, 1998), slip op. at 14-24 (¶¶ 30-53) ("Third NPRM").

⁹ Request at 2, 3-4.

¹⁰ Id. at 5-6.

the services of a major global MSS provider. In keeping with the Commission's commitment to open the U.S. market for satellite services to foreign competition,¹¹ Petitioners urge the Commission to make such market entry possible by foreign satellite systems such as ICO by requiring the filing of the information described in the Request as soon as possible.

II. The Order Deprives MSS Operators and the Commission of Information That the Commission Identifies as Necessary to Permit the Establishment of 2 GHz MSS.

In the Order, the Commission agrees with Petitioners that possession of accurate information of the kind sought in the Request "*is necessary both to us in the formation of our regulatory policies, and to the parties to any relocation negotiation.*"¹² In much of the rest of the Order and the Third NPRM, however, the Commission appears to retreat inappropriately from that conclusion.

Instead, for example, of requiring the filing of the information described in the Request, the Commission -- as noted above -- asks that BAS licensees alone file only a portion of the information sought in the Request in their comments in response to the Third NPRM. It is unlikely, however, that many BAS licensees will volunteer such information during the comment cycle. Furthermore, the Commission does not explain clearly its decision to request information only of BAS licensees, and not of FS licensees,¹³ or to request only certain information sought by

¹¹ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd 24094 (1997).

¹² Order, FCC 98-309, slip op. at 25 (¶ 55) (emphasis added).

¹³ In the Request, Petitioners asked that the Commission require each affected FS licensee to:

- provide the manufacturer, model number, age, acquisition cost, present

Petitioners and not the rest of that information. Rather, the Commission states without elaboration that the information it requests -- combined with other information that it expects to receive in the course of its program to establish a Universal Licensing System¹⁴ -- is all that is necessary to enable it to establish appropriate regulatory policies.¹⁵ The Commission does assert in the Third NPRM that the information it requests of BAS licensees will also "help determine the approximate cost of modification or replacement of all BAS equipment so that MSS licensees can better anticipate and plan for relocation costs"¹⁶ -- but never explains why the other information sought by Petitioners would not serve the same purpose.

The Commission's decision not to request any information from affected 2 GHz FS licensees clearly must be reconsidered and reversed, as it deprives both MSS operators and the

value, depreciation schedule, serial number and description of any FS transmitters or receivers (including antennas) licensed to its company;

- identify the typical link margins for links operated under its company's FS license;
- explain to what extent its company's FS operations in the 2165-2200 MHz band (if any) also involve operations in the 2110-2150 MHz band such that relocation of the operations in the former band would require relocation of those in the latter; and
- indicate which microwave links, if any, use space diversity either to improve performance or prevent outage.

¹⁴ Petitioners note that the Commission does not indicate what information is being collected in that program or when it will be available for the Commission's use. See Order, FCC 98-309, slip op. at 25 (¶ 55). Petitioners' understanding is that the information collections for the program involve only the most superficial facts as to a licensee's identity, call sign, and the like.

¹⁵ Id.

¹⁶ Third NPRM, FCC 98-309, slip op. at 19 (¶ 43).

Commission of any information on which to make rational decisions with respect to 2 GHz FS operations. At least with respect to affected 2 GHz BAS licensees, however, the Commission requests (though fails to require) the filing of information on the very same topics addressed by the questions in the Request. Indeed, although it suffers from certain significant omissions, the Commission's information request in the Third NPRM essentially affirms the importance to the Commission's policymaking activities and to MSS operators' planning processes of the questions first posed in the Request. Given the substantial common ground between the Commission's information request and the information sought by Petitioners -- as illustrated in the following table -- it is unclear why the Commission did not simply require that the information sought in the Request be submitted in the first place.

	Information Requested by Commission in Third NPRM	Information Sought by Petitioners
1	As complete information as possible on existing BAS operations	<ul style="list-style-type: none">• The manufacturer, model number, age, acquisition cost, present value, depreciation schedule,¹⁷ serial number and description of any 2 GHz Electronic News Gathering ("ENG") transmitters (exclusive of antennas, power supplies and other common support equipment such as vehicles) owned or operated by each BAS licensee's TV station or in partnership with other stations;• The number of fixed and mobile ENG transmit sites in the area served by each frequency coordinator, the geographic coordinates of each site (if applicable) and any pertinent details on configuration and use;• Identification of all BAS facilities capable of frequency offset (i.e., carrier frequency not in the center of the channel) in the area served by each frequency coordinator and a specific description of the offset capability
2	Number of existing BAS facilities	Covered in 1 above
3	Location of existing BAS facilities or identification of same as mobile/portable	<ul style="list-style-type: none">• The Nielsen Designated Market Area served by each affected BAS licensee;• the approximate area/region encompassed by that market;• whether, among those transmitters classified as "mobile/portable," the licensee's transmitter is permanently installed in an ENG vehicle or not
4	Whether existing BAS facilities communicate with a single or multiple receive sites	Covered by Item 8 below

¹⁷ The request for information on BAS licensees' equipment depreciation schedules accords with the Commission's own request, in the FNPRM, for comments on whether it should take the value and age of BAS equipment into account in deciding appropriate costs in the case of involuntary relocation. FNPRM, 12 FCC Rcd at 7417 (¶ 70).

	Information Requested by Commission in Third NPRM	Information Sought by Petitioners
5	Any available information on the approximate costs of new digital equipment	Information on the schedule of the licensee's station for conversion to digital ENG equipment, including dates of anticipated acquisition of such equipment and of conversion to its use ¹⁸
6	Any available information on the extent to which 2 GHz ENG equipment currently deployed can be externally tuned to new carrier frequencies and/or bandwidth	<ul style="list-style-type: none">• Identification of any 2 GHz ENG equipment owned and/or operated by the licensee's TV station that can be externally tuned to new carrier frequencies and/or bandwidth;• Identification of all transmit and/or receive vehicles/locations of the licensee's station that can only operate in the 1990-2110 MHz band;• Identification of all transmit and/or receive vehicles/locations of the licensee's station that can operate in the 1990-2110 MHz band as well as in other bands
7	Any available information on the extent to which BAS channels 1 and 2 (1990-2025 MHz) are currently used	<ul style="list-style-type: none">• Identification [by frequency coordinators] of all stations whose 2 GHz ENG equipment uses ENG channel 1, channel 2 or both, and whether that use is designated as either a primary or a secondary frequency assignment;• Information on whether any operators in the area served by each frequency coordinator avoid ENG channel 1 or make any other allowances for PCS interference -- and if so, a description of those allowances;• Specification of all current BAS channels which the licensee has used at least once per week over the previous 12 month period

¹⁸ This request comports with the Commission's request in the FNPRM for comment "on likely scenarios for conversion from analog to digital BAS, and the implications such a conversion may have for BAS spectrum requirements." Id. at 7415 (¶ 68).

	Information Requested by Commission in Third NPRM	Information Sought by Petitioners
8	Any available information on the particulars of BAS operation with respect to fixed BAS receive sites	<ul style="list-style-type: none">• The manufacturer, model number, age, acquisition cost, present value, depreciation schedule,¹⁹ serial number and description of any 2 GHz Electronic News Gathering ("ENG") receivers (exclusive of antennas, power supplies and other common support equipment such as vehicles) owned or operated by each BAS licensee's TV station or in partnership with other stations;• The number of ENG receive sites and receivers at each site in the area served by each frequency coordinator, the geographic coordinates of each site and receiver (if applicable) and any pertinent details on configuration and use
9	Any available information on the typical hours of operation of ENG systems during the day and night	Information on the typical hours of operation of ENG systems during the day and night in the area served by each frequency coordinator
10	Any available information on the average duration of ENG transmissions	Information on the average duration of ENG transmissions in the area served by each frequency coordinator
11	Any available information on whether there will be any impact on equipment other than BAS transmission equipment itself	Covered by Item 8 above

As the Commission has thus already endorsed the validity and value of the Request, all that remains for it to do is to require the filing of the information that it agrees is needed.

¹⁹

See supra n. 17.

III. The Commission's Request is Insufficient to Elicit the Needed Information in Timely Fashion.

The fundamental problem posed by the Third NPRM, insofar as the Request is concerned, is that it does not provide a reliable means of securing the information that the Commission and MSS operators require when that information is needed. Without the prompt addition of the information at issue to the record of this proceeding, the Commission is unlikely to be able to develop sound 2 GHz policies and MSS operators are unlikely to be able to bring new MSS services to U.S. consumers in the near term.

The ineffectiveness of the Commission's information request is partly due to the phrasing of many of its questions, which are posed in such a manner that they are unlikely to produce the information that MSS operators need for purposes of estimating potential relocation costs or that the Commission needs to establish an accurate picture of 2 GHz incumbent licensee operations. For example, the Commission asks BAS licensees to submit "as complete information as possible on existing BAS operations, including the number of existing BAS facilities" ²⁰ As the Commission does not identify *what* facilities BAS licensees are to report, the numbers that will be submitted by such licensees are likely to be useless.

The Commission also asks BAS licensees to report "where [BAS facilities] are located or mobile/portable, and whether they communicate with a single or multiple receive site[s]." ²¹ Because, however, the FCC does not specify whether the location information that it requests should consist of coordinates, the name of the nearest municipality or merely the applicable state

²⁰ Third NPRM, FCC 98-309, slip op. at 20 (¶ 43).

²¹ Id.

or region, it is likely to receive a hodgepodge of unhelpful responses. The Commission also does not ask for precise information on the number and location of the receive sites with which BAS facilities communicate, and thus the information reported by BAS licensees on that subject will surely be of little value as well.

Even if the Commission's questions of BAS licensees were sufficiently precise for its own purposes and those of MSS operators, there is little chance that sufficient numbers of BAS licensees will respond to make the accumulated data useful in a policymaking context or for purposes of estimating relocation costs. Obviously, not all BAS licensees are playing an active role in the instant proceeding, nor are they required to do so. Those that are actually participating in the proceeding may well choose to withhold the information that the Commission requests in order to gain leverage in anticipated negotiations. No single organization representing the BAS industry as a whole will provide the needed information, as it appears that no such organization has been appointed for that purpose and the necessary information has surely not been assembled by any one body to date. Thus, the information request in the Third NPRM will leave the Commission with a hazy and distinctly unreliable impression of the current and future needs of 2 GHz BAS incumbent licensees. The Commission and MSS operators will have no accurate way of estimating either the scope of BAS licensee relocation or the cost of that relocation -- and, of course, no means at all of anticipating the scope or cost of any necessary relocation of affected FS licensees.

IV. The Order Renders the Commission's Negotiating Process Regarding 2 GHz Relocation Matters Unworkable.

In the Order, the Commission states that it has "adequately addressed" in its Third NPRM Petitioners' expressed need for information for purposes of planning and preparing for negotiations with affected BAS and FS licensees.²² The Commission explains that the good faith guidelines that it proposes in the Third NPRM to impose on such negotiations, if adopted, "will assure ICO and future MSS licensees of access to the information they need to plan and conduct relocation negotiations."²³ Unfortunately, however, the Order renders most of the information that Petitioners seek all but inaccessible, and makes the Commission's anticipated negotiation process among MSS, BAS and FS licensees completely unworkable.

A. Without the Information Sought in the Request, Useful Negotiations With Affected BAS/FS Licensees Are Impossible and Valuable BAS/FS and FCC Resources Will be Wasted.

Under the Commission's proposed method for addressing the needs of 2 GHz MSS operators and incumbent licensees, the very purpose of any negotiations between those parties would be to reach agreement on the terms of any necessary modification, replacement or relocation of BAS or FS facilities.²⁴ Without the information described in the Request, however, Petitioners *have no way of knowing with which incumbent 2 GHz BAS licensees they may or may not need to negotiate*. Unless the Commission reverses its Order and requires affected BAS licensees and frequency coordinators with knowledge of BAS operations to submit the

²² Order, FCC 98-309, slip op. at 25 (¶ 56).

²³ Id. at 26 (¶ 56).

²⁴ Third NPRM, FCC 98-309, slip op. at 17-24 (¶¶ 35-51).

information described in the Request, Petitioners will find themselves unable to commence meaningful negotiations with BAS licensees at all.

Petitioners are in a similar situation with respect to affected FS licensees. Without the information regarding affected FS licensees that Petitioners described in the Request, they cannot be certain to what extent some incumbent FS licensees may experience harmful interference from any MSS system. Petitioners therefore urge the Commission to reverse its decision in the Order and require FS licensees to submit the information described in the Request regarding their operations.

Petitioners ask the Commission to consider that, in spite of its stated preference for leaving the establishment of the information sought by Petitioners to the adversarial negotiation process, the assembly of the information described in the Request will benefit incumbent 2 GHz licensees as well as all MSS operators. At least with respect to ICO's MSS system, affected BAS and FS licensees that provide accurate information now on their current use of 2 GHz spectrum and the nature of their existing facilities may be able to avoid entirely the lengthy and complex negotiation and relocation processes prescribed by the Commission. Thus, requiring the filing of the information described in the Request will facilitate expeditious use of the 2 GHz spectrum by the MSS while retaining the integrity of incumbent licensee operations -- a goal explicitly endorsed by the Commission in the Third NPRM.²⁵ It will also minimize the expenditure of time and BAS/FS resources required to participate in the negotiation and relocation processes, and the expenditure of scarce FCC resources required to oversee those processes as well.

²⁵ See id. at 19 (¶ 42).

B. The Good Faith Guidelines That the Commission Plans to Apply to 2 GHz Relocation Negotiations Will Not Ensure That MSS Operators Receive the Information They Need.

The Commission notes in the Order its proposal that, in disposing of claims that a party to the anticipated 2 GHz relocation negotiations had not negotiated in good faith, it would consider, inter alia, "what steps the parties have taken to determine the actual cost of relocation to comparable facilities, and whether either party had withheld information requested by the other party that is necessary to estimate relocation costs or to facilitate the relocation process."²⁶ While the Commission seems to believe that the good faith guidelines, if adopted, will guarantee that MSS operators receive the information that they need in timely fashion, such will not be the case.

In the first place, the good faith safeguards described by the Commission in the Order would apply only during the mandatory phase of the contemplated negotiations. That phase would not even begin until a one-year voluntary negotiation period had elapsed (or, in the case of incumbent 2 GHz public safety licensees, a three-year voluntary period), and Petitioners assume that the Commission's preference is that no claim of any violation of good faith should be made until a substantial and prolonged attempt at negotiations in the mandatory phase has been undertaken. Thus, if the Commission sets the date for commencement of voluntary negotiations on the day of release of its next Report and Order in this proceeding, MSS operators may well not receive the information they require until late in the year 2000 or sometime in 2001. As noted above, such a timetable is untenable if ICO is to meet its system deployment schedule. It also does not permit other MSS operators to plan adequately for the deployment of their own respective systems.

²⁶ Order, FCC 98-309, slip op. at 25 (¶ 56).

Secondly, it appears that MSS operators will be unable to bring any necessary claims of good faith violations by BAS and FS licensees. As the Commission notes, any party alleging a violation of the good faith requirements must provide an independent estimate of the relocation costs of the facilities in question.²⁷ Such an estimate must include specifications for the comparable facility and statements of the costs associated with providing those facilities to the incumbent licensees.²⁸

MSS operators will not have such estimates at their disposal, as they will have no means of obtaining them. While the Commission's applicable rules on relocation negotiations would permit MSS operators, at the very end of the voluntary negotiation period, to hire independent third parties to inspect 2 GHz incumbent licensee facilities for purposes of making such estimates,²⁹ the expense, time and logistical considerations involved in arranging such inspections at affected BAS and FS licensee sites throughout the United States will make such an effort prohibitively burdensome. In any event, the necessary inspections could not be made until one year after the commencement of voluntary negotiations (or three years, in the case of public safety licensees), and thus would again severely delay the availability of 2 GHz MSS.

Should an aggrieved MSS operator somehow be able, in spite of these obstacles, to make a successful threshold showing of a violation of the proposed good faith requirements, it remains unclear what procedure the Commission would use to evaluate the showing or how much time would be required to resolve the dispute. Petitioners have found no applicable FCC case law

²⁷ See Third NPRM, FCC 98-309, slip op. at 22 (¶¶ 48-49).

²⁸ Id.

²⁹ See 47 C.F.R. § 101.71.

governing these matters, or establishing what sort of punishment, if any, might be imposed for a good faith violation. Without such procedures in place, and given the other problems with the good faith requirements noted above, Petitioners cannot be confident that those requirements will safeguard their rights to the information that they require -- even in the still distant mandatory phase of relocation negotiations.

V. The Commission Has Authority to Implement the Requested Inquiry, and Can and Should Do So Rapidly.

As Petitioners explained in the Request, the Commission has ample authority to require affected BAS and FS licensees and frequency coordinators to submit the information that Petitioners seek.³⁰ The Commission is fully empowered under Sections 4(i), 303(n), 308(b) and 403 of the Communications Act of 1934, as amended, as well as under the general public interest standard to which its actions are subject, to conduct or delegate to its staff the authority to conduct investigations in areas of Commission jurisdiction.³¹ Under Section 1.17 of the Commission's rules, the Commission or its representative may, in writing, require from any applicant, permittee or licensee "written statements of fact relevant to . . . matter[s] within the jurisdiction of the Commission."³² Furthermore, the Commission has held that the Communications Act of 1934, as amended, gives it full power and authority "to obtain the information necessary to discharge its proper functions. . . ."³³ The Commission's Order does not

³⁰ Request at 6-7.

³¹ 47 U.S.C. §§ 154(i), 303, 308, 403.

³² 47 C.F.R. § 1.17 (1997).

³³ Stahlman v. FCC, 126 F.2d 124, 127 (D.C. Cir. 1942).

suggest that the Commission lacks the requisite authority to grant the Request.

Although Petitioners have been informed by Commission staff that any collection of information of the kind sought in the Request would be subject to approval by OMB pursuant to Part 1320 of Title 5 of the Code of Federal Regulations, the process of obtaining OMB approval for such a request need not be lengthy. In fact, the Commission is permitted to request from OMB emergency processing of such a collection proposal, provided that the request is accompanied by a written determination that the collection of information is needed prior to the expiration of the time periods established for normal processing and is essential to the mission of the agency.³⁴ As the time frame for processing an information collection proposal of the kind requested by Petitioners can be five months,³⁵ and as the expedited processing of the information collection sought by Petitioners would serve the Commission's interest in a competitive U.S. MSS and benefit 2 GHz MSS, BAS and FS licensees alike, Petitioners submit that such a determination would not be difficult to reach.³⁶ A list of the questions that should be included in the information collection supported by Petitioners is attached hereto as Appendix A.³⁷

³⁴ See 5 C.F.R. § 1320.13.

³⁵ See 5 C.F.R. §§ 1320.5, 1320.8, 1320.9, 1320.10, 1320.11, 1320.12.

³⁶ The Commission has, in fact, already made this determination in finding that the possession of the type of information sought by Petitioners "is necessary both to us in the formation of our regulatory policies, and to the parties to any relocation negotiation." Order, FCC 98-309, slip op. at 25 (¶ 55).

³⁷ The questions in Appendix A are divided into three categories: those to be asked of affected 2 GHz BAS licensees, those to be asked of frequency coordinators with knowledge of affected BAS operations, and those to be asked of affected 2 GHz FS licensees. Should the Commission have good reason to believe that any of the questions for frequency coordinators can be answered fully and accurately by affected BAS licensees themselves, it may wish to ask them of those licensees

Even if OMB were to decline the Commission's request for emergency processing of the information collection at issue, OMB's customary process for approval of information collections will still be more rapid than the processes for information collection set forth in the Commission's Third NPRM and Order. More importantly, a formal information collection is far more likely to elicit the information that MSS operators need than the measures described in the Third NPRM and the Order. Petitioners therefore urge the Commission to prepare a proposal for information collection as described herein and submit it to OMB for emergency processing as soon as possible.

instead.

CONCLUSION

For the foregoing reasons, the Commission should promptly reconsider and reverse its decision in the Order and grant the Request. The Commission should submit the information collection as set forth in Appendix A hereto to OMB for emergency processing and approval as soon as possible.

Respectfully submitted,

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APPENDIX A

**PROPOSED INFORMATION COLLECTION REGARDING
2 GHz INCUMBENT LICENSEE FACILITIES AND OPERATIONS**

- A. Questions for Affected Licensees of the Broadcast Auxiliary Service, the Cable Television Relay Service and the Local Television Transmission Service (together, the "BAS")
-
1. What Nielsen Designated Market Area ("DMA") does your licensed facilities serve?
 2. In what area/region within the DMA served by your licensed facilities do those facilities principally operate?
 3. Identify any 2 GHz Electronic News Gathering ("ENG") equipment owned and/or operated pursuant to your license that can be externally tuned to new carrier frequencies and/or bandwidth (including frequency offset operation).
 4. Identify all transmit and/or receive vehicles/locations covered by your license that can only operate in the 1990-2110 MHz band.
 5. Identify all transmit and/or receive vehicles/locations covered by your license that can operate in the 1990-2110 MHz band as well as in other bands.
 6. State the schedule for conversion of your licensed operations to digital ENG equipment, including dates of anticipated acquisition of such equipment and of conversion to its use.
 7. Specify all current BAS channels used pursuant to your license at least once per week over the past 12 months.
 8. Provide the manufacturer, model and serial number, age, acquisition cost, present value, depreciation schedule and general description of any 2 GHz ENG transmitters (exclusive of antennas, power supplies and other common support equipment such as vehicles) that are owned or operated pursuant to your license or in partnership with other licensees. Indicate

whether the transmitters are permanently installed in ENG vehicles, are portable units or are installed in fixed locations.

9. Provide the manufacturer, model and serial number, age, acquisition cost, present value, depreciation schedule and general description of any 2 GHz ENG receivers (exclusive of antennas, power supplies and other common support equipment such as vehicles) that are owned or operated pursuant to your license or in partnership with other licensees. Indicate whether the receivers are portable units or are installed in fixed locations.

B. Questions for Frequency Coordinators with Knowledge of Affected BAS ENG Operations

1. Identify all TV stations for whose ENG operations you are responsible.
2. Identify any TV stations whose 2 GHz ENG equipment uses ENG Channel 1 (1990-2008 MHz), Channel 2 (2008-2025 MHz), or both, and whether that use is designated as either a primary or secondary frequency assignment.
3. Provide the number of ENG receive sites and receivers at each site in the area that you serve. Identify their geographic coordinates and provide any pertinent details about their configuration and use (including choice of polarization for receive sites).
4. Provide the number of fixed and mobile ENG transmit sites in the area that you serve, their geographic coordinates (if applicable), and any pertinent details about their configuration and use.
5. Identify all BAS facilities capable of frequency offset (i.e., carrier frequency not in the center of the channel) in the area that you serve and describe with specificity the offset capability;
6. Do any operators in the area that you serve avoid ENG Channel 1 (1990-2008 MHz) or make any other allowances for PCS interference? If the latter is true, what allowances do they make?

7. Provide the typical hours of operation of ENG systems during the day and night in the area that you serve, and the average duration of ENG transmissions.
8. Describe the extent of relative use of current BAS channels 1-7 in the area that you serve (i.e., the number of times that each BAS channel is used throughout a stated 90 day period).
9. Identify all records or logs concerning the foregoing information, and state where they are maintained (provide address and phone number) and in what format or storage medium.

C. Questions for Affected Fixed Service ("FS") Licensees

1. Provide the manufacturer, model and serial number, age, acquisition cost, present value, depreciation schedule and general description of any FS transmitters or receivers (including antennas) licensed to your company.
2. Identify the typical link margins for links operated under your company's FS license.
3. To what extent do your company's FS operations in the 2165-2200 MHz band (if any) also involve operations in the 2110-2150 MHz band such that relocation of the operations in the former band would require relocation of those in the latter?
4. Indicate which microwave links, if any, use space diversity either to improve performance or prevent outage.
5. To what extent can your licensed FS facilities be externally retuned to new frequencies and/or bandwidth?

CERTIFICATE OF SERVICE

I, Tim Jordan, do hereby certify that the foregoing "Request for Mandatory Submission of Information" were delivered this 23rd day of December, 1998, to the following:

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